ಚಳವಳಿ ಪ್ರಾರಂಭಿಸಿದ್ದಾರೆ, ಒಂದು ವರ್ಷದಿಂದಲೂ ಕಾರ್ಡಿನ ಸುರಿಮಳೆ ಮತ್ತು ಪ್ರಿಂಟ್ ಮಾಡಿದ ಮನವಿಪತ್ರಗಳ ಸುರಿಮಳೆ ನಮ್ಮ ಹತ್ತಿರಕ್ಕೆ ಬರುತ್ತಿವೆ, ನೀವು 10 ಸಾವಿರಕ್ಕೆ ನಿಲ್ಲಿಸಿದ್ದೀರಿ, ಇದರಿಂದ ಯಾವ ಒಂದು ಸಣ್ಣ ಹೋಬಳಿಲೂ ಕೂಡ ಏನಾಯಿತಿ ಪಡೆಯುಲು ಸಾಧ್ಯವಿಲ್ಲ, ಆದಕ್ಕಾಗಿ 25 ಸಾವಿರಕ್ಕೆ ಏರಿಸಬೇಕು ಎಂದು ಕೇಳುತ್ತಿದ್ದಾರೆ. ಈ ವಿಚಾರದಲ್ಲಿ ನಾನು ಚರ್ಚೆಯಲ್ಲಿ ತೊಡಗುವುದಕ್ಕೆ ಬಯಸುವುದಿಲ್ಲ. ಇದರ ಪರವಾಗಿ ಮತ್ತು ವಿರುದ್ಧವಾಗಿ ವಾದಿಸಬಹುದು. ಅನೇಕ ಸಂದರ್ಭಗಳಲ್ಲಿ ನಮ್ಮ ಅನುಭವ ನಿಜವಾಗಿಯೂ ಟರ್ನ್‌ಓವರ್ 30 ಸಾವಿರ ರೂಪಾಯಿದ್ದರೆ ತೋರಿಸುವುದು 10 ಸಾವಿರ ರೂಪಾಯಿ. ಆದುದರಿಂದ ಈ ಅಪಾದನೆಯನ್ನು ಜನರಲ್ಲಾಗಿ ಎಲ್ಲರಮೇಲೂ ಮಾಡುವುದಿಲ್ಲ. ಪ್ರಾಮಾಣಿಕವಾಗಿ ವ್ಯವಹಾರ ಮಾಡುವವರೂ ಇರಬಹುದು, ಅವರು ಬಹಳಮಟ್ಟಿಗೆ ಕಷ್ಟಕ್ಕೆ ಗುರಿಯಾಗುವರು. ಏನೇ ಇರಲಿ, ಇದರಲ್ಲಿ ವಾಸ್ತವಿಕ ವಿರುವುದನ್ನು ತಿಳಿದುಕೊಂಡಿದ್ದೇನೆ. ಮಾನ್ಯ ಜ್ಯಾಲನಯ್ಯನವರು ಹೇಳಿದಂತೆ ಈ ವಿಚಾರವನ್ನು ಪುನಃ ಭೂತಲಿಂಗಂ ಸಮಿತಿ ಪರಿಶೀಲಿಸುವಂತೆ ತಿಳಿಸುತ್ತೇವೆ, ಈ ವಿಚಾರ ಈಗಾಗಲೇ ಅವರ ಮುಂದಿದೆ. ಎಲ್ಲ ಅಭಿಪ್ರಾಯಗಳನ್ನೂ ಪರಿಶೀಲಿಸಿ ಅವರು ಯೋಗ್ಯ ನಿರ್ಣಯಕ್ಕೆ ಬರುವರು. ಯಾವ ಶಿಫಾರಸ್ಸು ಅವರು ಮಾಡುವರೋ ಆ ಪ್ರಕಾರ ಸರಕಾರ ತೀರ್ಮಾನಮಾಡುವುದು. ಮಾನ್ಯ ಸದಸ್ಯರು ತಂದ ತಿದ್ದುಪಡಿ ಬಹಳಮಟ್ಟಿಗೆ ಉತ್ತಮವಾಗಿದೆ. ನಾನು ಹೇಳಿದ ಧರವಸೆಮೇರೆ ಅವರು ತಮ್ಮ ತಿದ್ದುಪಡಿ ಮಸೂದೆಯನ್ನು ವಾಪಸು ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ.

ಶ್ರೀ ಎಚ್. ಬಿ. ಜ್ಯಾಲನಯ್ಯ.—ಅಧ್ಯಕ್ಷರೇ, ಮಾನ್ಯ ಆರ್ಥಿಕ ಮಂತ್ರಿಗಳು ಸಾರ್ವಜನಿಕ ಜೀವನದಲ್ಲಿ ಚಿಕ್ಕ ವರ್ತಕರಿಗೆ ಎಷ್ಟು ಕಷ್ಟವಾಗುತ್ತದೆಂಬುದನ್ನು ಅರಿತಿರುವುದಾಗಿ ಹೇಳಿದ್ದಾರೆ. ಅದರ ಜೊತೆಗೆ ಈ ತಿದ್ದುಪಡಿ ತಂದ ಕಾಲದಲ್ಲಿ ಭೂತಲಿಂಗಂ ಕಮಿಟಿ ನೇಮಕವಾಗಿರಲಿಲ್ಲ ಎಂದು ಕಾಣುತ್ತದೆ. ಈಗ ಇದನ್ನು ಬಹಳ ಸಹಾನುಭೂತಿಯಿಂದ ಪರಿಶೀಲಿಸುವುದಕ್ಕೆ ತಕ್ಕ ವ್ಯವಸ್ಥೆಯಾಗಿದೆ, ಸರಕಾರ ಕೂಡ ಕೆಲವುಳವನ್ನು ಅರಿತಿದೆ ಎಂದು ಧರವಸೆ ಕೊಟ್ಟಿರುವುದರಿಂದ, ಭೂತಲಿಂಗಂ ಕಮಿಟಿ ಈ ಸಭೆಯಲ್ಲಿ ನಡೆದ ಚರ್ಚೆಯನ್ನು ಗಮನಿಸಿ ಸಣ್ಣ ವರ್ತಕರಿಗೆ ವಿಶೇಷವಾದ ಒಂದು ರೀತಿಯ ಸೌಲಭ್ಯ ಕಲ್ಪಿಸುವುದು ಒಂದು ಸುವ್ಯವಸ್ಥೆ ಮಾಡುವರು ಎಂದು ನಂಬಿ ಈ ಒಂದು ತಿದ್ದುಪಡಿ ವಿಧೇಯಕವನ್ನು ವಾಪಸು ತೆಗೆದುಕೊಳ್ಳಲು ಸಭೆಯ ಅನುಮತಿ ಬೇಡುತ್ತೇನೆ.

[MR. DEPUTY SPEAKER in the Chair]

The Bill was, by leave, withdrawn.

Mysore Public men Enquiries Bill, 1969.

Motion to Consider.

SRI H. N. NANJE GOWDA.—Sir, I beg leave of the House to move :

"That the Mysore Public Men Enquiries Bill, 1969 be taken into consideration."

SRI K. PUTTASWAMY.—Sir, I rise to a point of order.

[MR. SPEAKER in the Chair]

Sir, I have risen on a point of order to say that that a Bill of this nature cannot be taken into consideration in this House on two grounds, one is that this House is not competent to consider this Bill as it is beyond its jurisdiction, and the second is, if it is held that this House is competent, it is hit by the mischief of article 207(3) of the Constitution. This Bill has not received the recommendation or the sanction of the Governor for consideration by this House.

Sir, while dealing with the first ground, we have to consider whether the Chief Justice or the Judges of the High Court would be performing a Judicial function or a non-judicial function. It is within

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the knowledge of the House that when a serving High Court Judge is appointed as a member of the Commission of Enquiry, he is not discharging a judicial function. Similarly, the Chief Justice or any High Court Judge appointed by the Chief Justice for this purpose would not be discharging judicial functions under this Bill.

Sir, this House is not competent to entrust to a Judge any duties other than what comes within the jurisdiction and powers of the High Court. If you kindly look into schedule 7, lists 1 and 2 of the Constitution, in list 2, item 3 relates to administration of justice, constitution and organisation of the courts except the Supreme Court and High Courts. This House is competent to legislate on the constitution and organisation of subordinate courts other than the Supreme Court and High Court.

Item 46 of List III relates to jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List. According to item No. 3 of List II, this House is competent to legislate regarding the jurisdiction and powers of all courts excluding the High Court and the Supreme Court. I would like to draw a distinction between a High Court and a High Court Judge. It is not that every enquiry or every act that the High Court Judge discharges under any other law, that becomes a part of the duties of the High Court. The Chief Justice or a High Court Judge under this Bill would not be discharging the duties that devolve on the High Court as such. Through a special legislation, the Chief Justice and the Judges of the High Court are required to do a certain thing. It is not their option. It is within the knowledge of this House that whenever a Judge of the High Court is required to take up certain other responsibilities, he is requested to do so; and unless the concerned Judge agrees, it would not be competent for the Government to compel him to undertake those duties. In this Bill, the Chief Justice has no other option except, I think, to perform the functions that are enivisaged under this Bill. The Judge who is going to be appointed under this Bill, will also not have an option. He is compelled by this statute to undertake these duties. My objection is that this House has no right whatsoever to entrust non-judicial functions to the Chief Justice or any of the Judges of the High Court.

It is further made very clear by para 11 of Part D of Second Schedule. Para 11 reads as follows:

"11. In this Part, unless the context otherwise requires,—

(*a*) the expression 'Chief Justice' includes an acting Chief Justice, and a 'Judge' includes an ad hoc Judge:

(*b*) 'actual service' includes—

(i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge;"

I would like to place for your consideration item (b) of para 11 of Part D of Schedule II. According to this, when a Judge is requested to attend to the work that is envisaged in this Bill, he would not be acting as a Judge. The time spent by him in discharging the functions under this Bill would not be considered as time spent by a Judge. And should he do so, no other authority except the President of India can make a request. It is stated in the Constitution "at the request of the President undertake to discharge." Even here, it is not said "on the orders of the President." Here also it is said, a Judge may perform such other functions "at the request of the President." When a non-judicial function has to be performed by the Chief justice or a Judge of the High Court, it cannot be taken up by him without a request from the President. Even the President cannot order the Chief Justice or a Judge of the High Court to take up non-judicial functions. They can take up such functions at the request of the President.

I make a humble submission to this House that this House is not competent to pass a Bill of the kind that is sought to be placed before this House for consideration. Under our Constitution no person can compel a judge of the High Court to perform a non-judicial duty. Even when he is appointed for a special work, a Judge of the High Court is appointed with his consent. Here in this Bill, as it is placed before this House, the consent of the Judge is not contemplated. It does not say that the Government shall make a request to the President, who in turn has to request a Judge of the High Court to undertake this function. In the Bill, the word used throughout is 'shall' it says: "the Chief Justice shall refer it to a High Court Judge; the Judge shall proceed in the manner provided in the Bill, etc. From this point of view, I submit that this Bill is beyond the competence of this House and against the Constitution.

I would not like to take much time of the House as I know that the time of the House is very valuable. I shall touch only one other point as briefly as possible. This is a very familiar point which is often raised and discussed in this House. I do not think that any lengthy arguments are necessary in support of this point.

Article 207 (3) of the Constitution says:

> "A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill."

The meaning is very clear. We will have to find out whether as a result of this Bill coming into force as an Act, it requires any additional establishment. I know my hon. friend might turn round and argue that it does not require additional staff, and the existing staff of the High Court will discharge the duties and it will be a part of the duties

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of the Judge or Chief Justice. I would make an humble suggestion that this is a thing which cannot be permitted at all under any statutes. When we entrust a Government duty to the staff of the High Court, I am not making any reference to the High Court Judge, can we expect the staff of the High Court to take up any other work excepting the work of the High Court? If I am able to convince that the functions that the Chief Justice and the Judges of the High Court are expected to discharge under this Bill are non-judicial functions, then, I am sure you will agree that the staff cannot be made use of for the purpose of work connected with this enactment. There will have to be a separate staff for that purpose; a separate staff involves additional expenditure. Another thing is, if I have been successful in convincing you that this is a non-judicial function to the extent that the High Court Judge engages himself in work in connection with this enactment, to that extent he will have to be paid separately. That is also clear here. Even while acting as a member under the Commission of Enquires Act, he would not be entitled for the salary of a High Court judge, unless the President agrees to it. For these reasons, I submit that this Bill is out of order. Firstly, it is against the Constitution and if it were to be held that it is *intra vires* of the Constitution, then it is against Art. 207 (3).

† SRI H. N. NANJE GOWDA.—Sir, I oppose the point of order on the following grounds.—

The hon. Minister has referred to seventh schedule, List II, item 3, Administration of justice, constitution and organisation of all courts. He only made a reference and he failed to bring out how this Bill relates to these provisions. Therefore bringing in relationship of this Bill to List II of 7th schedule, Item 3, is not correct. This Bill intends to create a law and not any office of a judge or establishment of a new court. It is to create a law. If a legislation is enacted and if the Government takes objection that even enactment of a legislation amounts to the creation of a court or the appointment of a judge, it is impossible for me to appreciate the views advanced by the hon. Minister. He has drawn our attention to List III also, that is, jurisdiction of courts except the Supreme Court. He dealt with Lists II and III, the jurisdiction of the State Legislature or Parliament to enact legislation creating the post of judges or establishing new courts. This is not relevant because in the Bill I have not proposed to establish any new courts nor appoint new judges. I know the limitations of the State legislature and I am attempting only to enact a legislation to create law and not establish a court. The hon. Minister has drawn attention to schedule 2, Part D, item 11 (b):

" actual service " includes—

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge."

7.00 P.M.

I do not suppose that the hon. Minister has understood this provision correctly. As I have understood this, there are occasions wherein the President has requested the judges, whether the Chief Justice of High Court or any other judge of a High Court or of the Supreme Court, to function on certain Commissions. For example, the President on the request of the Union Government or State Government may constitute special commissions for a specific purpose and request the sitting Judge or Retired Judges to perform the work. That does not come within the scope of duties of a Judge. Therefore on certain occasions on the request of the President to function as head of a Commission, the judges have performed such functions. I am quite convinced that such presiding over commissions is not covered by the ordinary duties of a Judge. Therefore on such occasions on a request made by the President they had several Commissions. Here, I am not creating a Commission to be presided over by a Judge. This Bill seeks to create a law, as the Government have done on many occasions. The other day, Government brought forward a Bill. Of course, in administering these laws the Judges do try cases. Like that I am trying to create a legislation and we are not creating any office or appointing a judge to preside over some other Commission. So, I don't think there is any force in the arguments put forth by the Hon. Minister for Parliamentary Affairs.

SRI A. P. APPANNA (Deputy Minister for Industries).—Is not the hon. Member compelling a judge who is unwilling to do this job? Under the Constitution, the President alone can request a High Court judge to perform certain non-judicial functions.

SRI H. N. NANJE GOWDA.—The Hon. Minister for Parliamentary Affairs argued that a judge can function only on a request being made by the President.

MR. SPEAKER.—I think the hon. Member will require more time we shall continue the debate on the next non-official day. The House will now adjourn to meet at 1 P. M. on Monday.

The House adjourned at Five Minutes past Seven of the Clock to meet at One of the Clock on Monday, the 1st September 1969.

WD—13511 GPB—600—28-11-1969